United Nations A/62/121/Add.1

General Assembly

Distr.: General
6 September 2007

Original: English

Sixty-second session
Item 88 of the provisional agenda*
The rule of law at the national and international levels

The rule of law at the national and international levels: comments and information received from Governments

Report of the Secretary-General

Addendum

I. Introduction

As at 5 September 2007, the Secretary-General had received written comments from Switzerland, which appear below.

II. Views expressed by Member States on matters pertaining to the issues addressed in General Assembly resolution 61/39

Switzerland

[Original: English]

1. Introduction and general remarks

1. Switzerland attaches the greatest importance to the promotion of and respect for international law. In the 2005 World Summit Outcome document, Heads of State and Government reaffirmed their commitment to the purposes and principles of the Charter and international law and to an international order based on the rule of law and international law, which is essential for peaceful coexistence and cooperation among States (see General Assembly resolution 60/1, paras. 2 and 134).

2. The references to international law and the rule of law contained in the document express the high consideration and commitment which are accorded to them. By nature, however, these references are general and do not offer immediate guidance for implementation and for resolution of specific problems. Measures to

* A/62/150.

07-49722 (E) 170907

follow up on the results of the Outcome document are therefore crucial and Switzerland welcomes the important step taken with the adoption, by the General Assembly, of resolution 61/39 on the rule of law at the national and international levels.

3. It is imperative to strengthen the rule of law both at the national and international levels: the two spheres are clearly complementary. At the national level, intensive work has been done for many years, for example through bilateral or multilateral technical assistance and capacity-building. This work must continue. In the view of Switzerland, it is, however, also important to develop a more focused reflection on ways and means to achieve further adherence to the international rule of law. This is an essential and long-term undertaking which concerns all States and which can therefore be best advanced in a universal framework such as the United Nations. The United Nations and, in particular, the General Assembly, have a unique legitimacy and must play a leading role in this regard. This is why Switzerland strongly supported the inclusion of the new item on the agenda of the Assembly.

4. Switzerland wishes to suggest that it would be useful to further the reflection on the concept of the "international rule of law" in view of giving more concrete meaning to the term. References to the "international rule of law" that remain abstract or become merely rhetoric must be avoided. Switzerland is convinced that it will then be easier to identify ways and means to strengthen the "international rule of law" through individual and common action, with a view to increasing compliance and to promoting a law-based international order. A widely shared understanding of some basic concepts related to the "international rule of law" could facilitate more focused and efficient work from an operational point of view. For example, if the United Nations and its Member States wish to develop a strategy of national capacity-building and technical assistance in matters pertaining to the issue of the "international rule of law", such an understanding will be indispensable.

2. Elements for a common understanding of terms

2.1. Rule of law as a national concept ("*état de droit*")

5. While there is no single definition which could claim validity for all legal traditions, the notion of "rule of law" at the internal level essentially refers to an institutional system in which all exercise of public authority is subject to the law. The concept seems to include at least three constituting elements:

(a) Respect for the principle of legality and for the hierarchy of norms;

(b) Respect for the principle of equality of those subject to the jurisdiction of the State;

(c) Respect for the principle of separation of powers, including the independence of the judicial power.

6. At its source, the "rule of law" notion may have referred to formal criteria only. Over the last years, though, academic writing and public discourse on the rule of law seem to have evolved so as to include certain more substantive (content-

related) aspects to the rule of law concept, traditionally rather associated with the notions of human rights and democracy.[1]

2.2. International Rule of Law ("prééminence du droit")

7. While there is general agreement that the world order must be based on international rules, the concrete implications of this principle remain somewhat unclear. Reflection on the concept of the "international rule of law" should therefore be advanced. The Sixth Committee of the General Assembly, composed of international lawyers, might be in a particularly good position to proceed to an exchange of views on such a topic. The purpose of such a dialogue might be to contribute to the identification of some building blocks of a law-based international order.

8. It is suggested that the term "international rule of law" include the following constitutive elements:

(a) The recognition that international law — consisting of a body of legally binding rules — is the foundation of international relations;

(b) The principles of equal rights of States and self-determination of peoples in accordance with the purposes and principles of the Charter of the United Nations;

(c) The principle of *pacta sunt servanda*;

(d) The principle that States must act in good faith;

(e) The obligation to refrain from the threat or use of force in any manner inconsistent with the Charter of the United Nations;

(f) The principle that States must fulfil their obligations under international law irrespective of their domestic legal system, and the subsequent obligation for every State to establish effective internal mechanisms ensuring respect for international law;

(g) The obligation for every State to settle disputes by peaceful means, and the possibility for every State to have effective recourse against violations of its rights before an appropriate international institution;

(h) The protection of basic human rights and fundamental freedoms as a fundamental responsibility of every State not only towards its own citizens but also towards the international community as a whole;

(i) The possibility for the international community, in accordance with international law and the Charter of the United Nations, to take effective action collectively (in particular through the United Nations) against violations of international law which endanger essential interests of the international community (for example mass and grave violations of human rights).

---

[1] The most encompassing concept in this respect seems to be the notion of "good governance", which includes respect for the (formal) rule of law, human rights and democracy.

3. Suggested future action

3.1. Conceptual work

9. As previously stated, Switzerland believes that some conceptual clarification of the notion of the "international rule of law" would be useful as a starting point for further discussion of concrete actions. This approach reflects the spirit of resolution 61/39. It is important to be mindful of the comparative advantages of the Sixth Committee with regard to other actors. When it comes to defining capacity-building strategies in particular, it seems essential to keep in mind the invaluable efforts already made elsewhere in this regard. The Sixth Committee must not duplicate those efforts, but act complementarily and therefore focus on what added value it could offer, based on its specific legal expertise. Switzerland is of the view that some discussion on the meaning of "national" and, in particular, "international rule of law" might create such added value. It would facilitate a more focused reflection and contribute to wider "mainstreaming" of the idea within the United Nations system.

3.2. Identification of categories of concrete actions

10. In general terms, five categories of actions in favour of the international rule of law could be discerned. This categorization could also inspire the inventory of current activities requested by the General Assembly in paragraph 2 of its resolution 61/39:

(a) Measures aimed at the better implementation of international law (a "deepening" of international law), including technical assistance for the implementation of international obligations at the national level (capacity building);[2]

(b) Measures aimed at increasing the number of States parties to international instruments (extension of the geographical reach of international law);

(c) Measures aimed at the inclusion of new topics under the subject matter covered by international law (extension of the substantive reach of international law through the codification and progressive development of international law);

(d) Measures aimed at institutional developments through the establishment of organs and procedures contributing to better respect for international law;

(e) Measures aimed at promoting general awareness for international law at the national and international levels, the purpose being twofold:

- at the national level: demonstrate the relevance of international law and its increasing impact on people's daily lives ("outreach");
- at the international level: integrate international law into the work of the United Nations and into every State's political actions ("international law mainstreaming").

11. Within these categories, Member States could identify topics which could be discussed as a matter of priority and exchange thoughts and ideas on possible

[2] Every State has, of course, an obligation to ensure implementation on its own territory. But there may be value in endeavours for a State also assisting other States in their efforts to implement international obligations.

courses of concrete action relating to those topics. For Switzerland, the 2005 World Summit Outcome document is probably the best basis on which to set priorities and recommend concrete steps to advance a law-based international order.

12. The Secretary-General of the United Nations emphasized that "progress in a number of key areas will depend on decisions that must be taken by the Member States, and I would therefore underscore the urgent need for Member States to complete discussions on those issues so that we can move towards implementation" (A/60/430, para. 46). The adoption of resolution 61/39 by the General Assembly created the basis for focused and gradual action within the framework of the United Nations. Exchanges of views and cooperation among all States are now needed to identify those elements of the Outcome document which are most related to the international rule of law and for which concrete steps for implementation can usefully be taken.

3.3. Examples of possible concrete steps

13. At this juncture, Switzerland wishes to suggest only a few concrete examples that the Sixth Committee might wish to consider:

(a) It seems important to further improve conditions under which all States can participate fully in international legislative processes. Only through full participation by all States can the result of international negotiations hope to claim universal legitimacy. If international instruments are expected to be universally accepted and implemented, the possibility for all States to participate throughout the entire negotiations is key. It would therefore seem important to analyse the reasons why certain States cannot participate in negotiations in the way they might wish to, with a view to addressing those reasons effectively;

(b) In more general terms, adequate technical assistance in favour of the international rule of law should be offered by the United Nations — as well as by other international organizations and by States with sufficient resources — to States which require such assistance, in conjunction with other public and private associations and organs of the State concerned. Such assistance might take many forms, depending on the concrete needs advanced by the respective State. One might think of measures to enhance the capacity of States to ensure, within the three branches of Government, a wide knowledge of and therefore adherence to international law. This might include a wide range of measures, such as general awareness-building measures, concrete measures to facilitate access to sources of international law (for example by providing access to the Internet) and the delivery of specific legal expertise with a view to facilitating national implementation of international obligations. In this context, Switzerland wishes to reiterate its strong support for the important role to be played by the Rule of Law Coordination and Resource Group and its Secretariat unit;

(c) The International Court of Justice is undoubtedly at the heart of a law-based international order. Switzerland encourages all States that have not already done so to accept the jurisdiction of the Court as compulsory without a special convention vis-à-vis all other States accepting the same obligation, in accordance with chapter 2, article 36 of the Court's Statute. The United Nations should renew efforts to increase the number of States which have made such a declaration.